



C.M.A.No.3141-3168/2011

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 06.11.2023

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

C.M.A. NOS.3141 & 3168 OF 2011

AND

M.P. NO.1 OF 2011 (2 NOS.) & 2 OF 2011

C.M.A. NO.3141 OF 2011

The Project Director,
National Highways Authority of India,
No.1/54-28, Butt Road,
St. Thomas Mount, Chennai-16.

.. Appellant

- Vs -

1. Unnamalai Ammal (Died)

1. The Special District Revenue Officer (LA)
National Highways
Chennai.

1. District collector,
Kancheepuram District/Arbitrator,
Kancheepuram.

1. Ganesan Viswanathan

1. V.Subiramaniam
(RR-4 & 5 brought on record as
LRs of deceased R-1 vide Court order
dated 20.10.2023 made in CMP.No.18915
18918 and 18905 of 2021)

.. Respondents



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W.P. NO. 3168 OF 2011

1. The Special District Revenue Officer (LA)
National Highways
NH4, Kancheepuram District
Kancheepuram.

1. The District Collector
District Arbitrator
Kancheepuram District
Kancheepuram.

.. Appellants

- Vs -

Unnamalai Ammal

.. Respondent

C.M.A. No.3141 of 2011 filed under Article 37 of the Arbitration and Conciliation Act, 1996 to set aside the order dated 16.06.2010 of the learned Principal District Judge, Chengalpattu in Arbitration OP. No.139 of 2007 and dismiss the original petition filed by the first respondent under Section 34 of the Arbitration and Conciliation Act 196 and restore the arbitral award passed by the 3rd respondent in RC.No.18576 of 2004/F5 dated 07.07.2005.

C.M.A. No.3168 of 2011 filed under Article 37 of the Arbitration and Conciliation Act, 1996 against the order dated 16.06.2010 of the learned Principal District Judge, Chengalpattu in Arbitration OP. No.139 of 2007.



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For Appellants : Ms.S.R.Sumathy in CMA 3141/2011
Mr. Edwin Prabhaka, Spl. GP
in CMA 3168/2011

For Respondents : Mr. A.Edwin Prabhakar, SGP
for RR-2 & 3 in CMA 3141/2011
Mrs. V.Chandrakantha, for RR-4 & 5 in
CMA 3141/2011 & R-1 in CMA 3168/2011

COMMON JUDGMENT

Aggrieved by the order dated 16.06.2010 passed by the learned Principal District Judge, Chengalpattu in Arbitration OP. No.139 of 2007 filed u/s 34 of the Arbitration and Conciliation Act 1996 by the 1st respondent, the present appeals, two in number, one by the appellant/requisitioning authority and the other by the District Arbitrator and the Acquisitioning Authority, have been filed seeking restoration of the arbitral award passed by the District Arbitrator/District Collector, viz., the 3rd respondent in RC. No.18576 of 2004/F5 dated 07.07.2005.

2. It is the case of the appellant that the 1st respondent, viz., Unnamalai Ammal is the owner of the property, measuring an extent of 12 sq. m.



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comprised in S.No.346/18A2, 27 sq. m. in S.No.347/982 and 69 sq. m. in S.No.347/10A2 in all totaling to 108 sq. m., which was sought to be acquired by the National Highways Authority of India for the purpose of widening of road from Chengalpattu to Trivandrum. Notification u/s 3A (1) of the National Highways Act (for short 'the Act'), dated 28.02.2002 was issued and the District Revenue Officer, Kancheepuram was authorized to perform the functions of the acquisitioning authority under the provisions of the Act. In accordance with the said notification, the lands were acquired and the acquisitioning authority, viz., the Special District Revenue Officer, passed an award on 17.02.2004 fixing the compensation at Rs.1000/- per cent after following the provisions of the Act.

3. It is the further case of the appellants that aggrieved by the said award in and by which the compensation was fixed, the 1st respondent/ owner of the land preferred appeal before the Arbitrator under Section 3G (5) of the Act in which the District Collector/District Arbitrator passed the Arbitral award enhancing the compensation to Rs.1275/- per cent vide order dated 07.07.2005. Aggrieved by the meager compensation awarded vide the aforesaid award, the land owner/1st respondent herein filed Arb. OP No.139



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of 2007 u/s 34 of the Arbitration & Conciliation Act the Principal District Judge, Chengalpet, in which an order was passed on 16.06.2010, enhancing the compensation to Rs.20,000/- per cent along with interest at 12% and solatium at 30%. Challenging the aforesaid order, the present appeals have been filed.

4. Learned Special Government Pleader appearing for the State, viz., the appellant in CMA No.3168/2011 submitted that admittedly the acquisition authority passed the award, which was appealed by the 1st respondent/owner of the land by invoking Section 3G (5) of the Act. In the said arbitration proceedings, the District Collector/Arbitrator had passed the order enhancing the compensation payable to Rs.1275/- per cent. It is the submission of the learned Special Government Pleader that an appeal u/s 34 of the Arbitration and Conciliation Act would be maintainable only when the instances mentioned therein stood attracted. However, none of the contingencies mentioned u/s 34 of the Arbitration and Conciliation Act stand attracted to the award passed by the District Collector. Such being the position, the entertainment of the said arbitration original petition by the court below and enhancing the compensation by setting aside the arbitral



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award is wholly erroneous as such a petition is not maintainable. It is the further submission of the learned Special Government Pleader that when procedure contemplated under the Act has been complied with, the award cannot be challenged by filing the arbitration original petition and in the absence of any pleading on the lines spelt out in Section 34, entertainment of the petition by the court below is wholly unsustainable.

5. Learned Special Government Pleader further submitted that pending the appeal, the land owner filed an execution petition as against the State before the District Court in EP.No.12 of 2011. If the said petition is ordered, properties of the State will be attached and the State will face untold hardship. Therefore, the learned counsel prays that this Court may allow these appeals and set aside the impugned award.

6. Learned standing counsel appearing for the appellant in CMA No.3141/2011, while sailed along with the contentions of the learned Special Government Pleader, further submitted that the contingencies spelt out in sub-sections (2) and (3) of Section 34 of the Arbitration and Conciliation Act alone could be the basis to interfere with the arbitral award and in the



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absence of any such pleading by the land owner, the entertainment of the petition itself is unsustainable. It is the further submission of the learned standing counsel that the finding recorded by the court below that the land cost is on the rise, is wholly erroneous, as only due to the formation of the National Highway, the price of the land is soaring and not before and, therefore, the rate anterior in point of time would alone form the basis for fixing the compensation for the land, which has been properly done by the District Collector and, therefore, prays for setting aside the said order and to restore the arbitral award.

7. The learned counsel for the 1st respondent/land owner submitted that C.M.A. No.3168/2011 filed by the Arbitrator/District Collector and the Special District Revenue Officer are not maintainable as the Special District Revenue Officer, who is the acquisitioning authority, renders a quasi-judicial function in fixing the compensation and once the compensation is fixed, which is to be paid by the requisitioning body, the acquisitioning authority is denuded of its powers to proceed any further. It is the further submission of the learned counsel that the same applies to the Arbitrator/District Collector, as after passing the order in the appeal, the said authority becomes *functus*



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officio and the said authority has no interest in the matter. The court below has rightly appreciated all the facts, including the documents, which have been filed by the land owner, while enhancing the compensation. In such circumstances, the appeal in CMA No.3168/2011 at the instance of the said authorities are wholly misconceived and not maintainable.

8. Insofar as CMA No.3141/2011 is concerned, learned counsel appearing for the land owner submitted that the requisitioning authority, though had not been impleaded as party respondent in the arbitration original petition before the court below, however, the court had only considered the matter on the basis of the documentary evidence, which have been looked into by the acquisitioning authority and the arbitrator, in addition to the other documents, which have not been taken due note of by the said authorities, while fixing the compensation. Therefore, the non-inclusion of the requisitioning authority as a party in the arbitration original petition, would in no way frustrate the said petition and the petition would not fall down on account of non-joinder of parties.

9. It is the further submission of the learned counsel that the



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documents of the year 1994, which is prior to acquisition proceedings, though submitted by the land owner, however, has not been taken into consideration by the acquisition authority nor the Arbitrator, which has necessitated the filing of the arbitration original petition. Only in that backdrop, the original petition was filed in which the learned Principal District Judge, Chengalpattu after verifying the illegality and the erroneous award passed by the Arbitrator, passed judgment and decree enhancing the compensation of Rs.20,000/- per cent.

10. In this regard, learned counsel, referring to Section 3G (7) of the Act, submitted that it is the duty of the Arbitrator to take into consideration the market value of the land on the date of publication of the notification u/s 3A and non-compliance of the same would necessarily vitiate the award passed by the Arbitrator. It is the submission of the learned counsel that the Arbitrator having not taken note of the market value of the land in relation to the documents submitted by the land owner, which is anterior in point of time, vitiates the award and the increase in the price of the land would clearly show that the value of the land has not been properly appreciated by the acquisition authority as well as the Arbitrator.



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11. It is the further submission of the learned counsel that the evidence of RW1, the Special District Revenue Officer, clearly reveal that the land value is increasing day by day and the above land was acquired through notification on 01.03.2001 and the value was fixed by an award dated 17.02.2004, yet the market value and the no guideline value were taken into consideration, while fixing the compensation.

12. It is the further submission of the learned counsel that under Section 34 of the Arbitration and Conciliation Act, 1996, the learned Principal District judge, Chengalpattu is vested with the power to permit additional evidence. There is no prohibition under the Arbitration and Conciliation Act prohibiting the learned Judge for applying the procedure contemplated under the Civil Procedure Code. The learned counsel further submitted that the land was acquired in the year 2001, almost 20 years have lapsed, still the land owner is struggling to receive the compensation. It is the further submission of the learned counsel that till date, the award amount, even as quantified by the authorities have not been paid. Hence, the learned counsel prays that this court may dismiss the appeals.



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13. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing for the parties and perused the materials available on record.

14. There is no quarrel about the fact that acquisition proceedings were taken up and as a consequence thereof, the Special District Revenue Officer, as the Acquisition Officer, acquired the land from the 1st respondent and upon notification u/s 3A, the land stood vested with the Government. Further, following the provisions u/s 3C, objections were heard from the land owners, including the 1st respondent and, rejecting the said objections, report was submitted, whereinafter declaration of acquisition u/s 3D was issued and, thereafter, within the period prescribed under the Act, the compensation was arrived at by the acquisition authority u/s 3G.

15. The whole case starts only from the aforesaid point. It is the stand of the land owner that the relevant records of the sale, prior to the point of notification u/s 3A has not been properly considered either by the acquisition authority or by the Arbitrator, which aspect has been



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considered by the court below, while enhancing compensation.

16. Before this Court embarks upon to address the said issue, it is to be noted that two appeals have been filed, one by the requisitioning authority in CMA No.3141/2011 and the other by the acquisitioning authority and the Arbitrator joining together in CMA No.3168/2011.

17. There could be no quarrel with the fact that the requisitioning authority can appeal against the order of the court below. But the acquisitioning authority, viz., the Special District Revenue Officer and the Arbitrator, viz., the District Collector are mere quasi judicial authorities, rendering quasi judicial service and they could have no grievance if any appeal is taken against their order. However, curiously, the said authorities have filed CMA No.3168/2011 aggrieved against the setting aside of the arbitral award by the court below.

18. When a quasi judicial authority exercise a quasi judicial function, upon the passing of an order as a consequence of fulfillment of the quasi judicial function, the said authority becomes *functus officio*. The said



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authority would not have any lien or interest over the said order so passed by it and such being the case, no appeal against the order passed by the said authority could be filed by the authority. In the above backdrop, the appeal in CMA No.3168/2011 filed by the District Collector and the Special District Revenue Officer, who are the Arbitrator and acquisitioning authority, is not maintainable and, therefore, the same deserves to be dismissed.

19. Coming back to the appeal in CMA No.3141/2011 filed by the requisitioning authority, true it is that the requisitioning authority has not been shown as party respondent in the arbitration original petition, as the petition has assailed the order passed by the Arbitrator. It is the case of the appellant in CMA No.3141/2011 that the original petition deserves to be dismissed for non-joinder of necessary party.

20. Though the said contention, on the face of it looks attractive, however, it is to be pointed out that challenge is made to the award of compensation by the acquisitioning authority, which has been put in issue in the arbitration proceedings before the Arbitrator. At that point of time, the requisitioning authority was no where in the picture and, therefore, the



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petitioner had not arrayed the requisitioning authority as a party respondent, as the challenge was not made to the acquisition, but only with regard to the compensation awarded by the authorities. Therefore, the petition, not including the requisitioning authority as a party in the array of respondents will not defeat the rights of the land owner to receive just and reasonable compensation.

21. Coming to the entertainment of the petition by the court below, it is the stand of the appellant/requisitioning authority that ingredients of Section 34 are not fulfilled and, therefore, the petition cannot be maintained. However, the said contention does not deserve acceptance for the simple reason that as aforesaid, the challenge is made to the compensation awarded, which has once again been put in issue in the arbitration original petition before the court below. Section 34 (2)(iv) of the Arbitration and Conciliation Act permits the aggrieved party to challenge the arbitral award when the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration.



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22. Section 3G (5) of the Act casts a duty on the Arbitrator, to determine the compensation, on the petition filed by a land owner not having the compensation awarded by the competent authority under sub-section (1) or (2) of Section 3G to be acceptable. Therefore, the main duty of the Arbitrator is to find out whether the compensation awarded by the competent authority, viz., the acquisitioning authority is just and reasonable or not, based on the documents, which are placed before it. If there is any infraction in the arbitral proceedings where the documents are not taken into consideration while arriving at the compensation, the rigours of Section 34 (2)(iv) comes into play and the court below is competent to entertain the arbitration original petition and adjudicate upon it.

23. In the case on hand, upon the arbitral award being passed, the land owner, not satisfied with the appreciation of documents, more so, certain documents relating to transactions of sale, which had taken place even in the year 1994, which was much prior to the acquisition of the lands by the requisitioning authority, which, though filed, had not been taken into consideration by the Arbitrator, had approached the court below seeking enhancement of compensation. In effect, the terms of arbitration itself being



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that the compensation awarded is meagre and certain documents have not been taken into consideration, nor even the market value and the guideline value had been taken into consideration, resort to Section 3G (5) was taken up. However, when even in the arbitration proceedings, the said documents have not been properly considered, the land owners have subjected themselves to the mercy of the court below to realise just and reasonable compensation.

24. It is to be pointed out that only for the purpose of early acquisition of the lands, the procedure has been contemplated under the Act by not resorting to the cumbersome procedure under the Land Acquisition Act, which provides adequate safeguards for the land owner with regard to compensation. However, the benefit given to the requisitioning authority cannot be used in detriment to the land owners by giving meagre compensation and curtailing their right to approach the District Court challenging the arbitral proceedings. Only for the said purpose, Section 34 (2)(iv) has been enacted, which casts a safety net for the land owners to get just and reasonable compensation.



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25. In the case on hand, as aforesaid, the award in the arbitration proceedings, having not properly considered the documents relating to the sale of the land and the value of the lands, adjoining the lands of the land owner/1st respondent herein, the petition was laid before the court below, which had, applying the procedure contemplated under the Code of Civil Procedure, had entertained adducing of fresh additional evidence by the land owner for arriving at a just and reasonable compensation. Such a procedure followed by the court below, is as per procedure and also within the legal framework and the same does not tantamount to wrong exercise of judicial powers, which is not vested with the court below.

26. Further, it is the stand of the 1st respondent/land owner that the ouster of jurisdiction of the court below was nowhere raised before the court below, when the petition for enhancement of compensation was heard. However, in view of the fact that this Court has held that the court below was well within its power to entertain the petition filed by the 1st respondent seeking enhancement, this Court is not entering into the question of non-raising of ouster of jurisdiction before the court below.



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27. The requisitioning authority has filed the appeal specifically on the question of non-joinder of parties, to which this Court has given its answer against the appellant. Once the non-joinder of party does not hit the land owner, necessarily, the arbitration original petition filed seeking enhancement of compensation could very well be adjudicated by the court below, which the court below has rightly done so and this Court does not find any reason to interfere with the well reasoned order passed by the court below.

28. Though this Court has negated the contentions raised by the appellants, what strikes at the root of the matter is the fact that the land was acquired in the year 2001 and inspite of the award of meagre compensation and a meagre enhancement of compensation by means of the arbitral award, the land loser has not seen the colour of the coin till date, inspite of passage of more than two decades. What is more heartening to note here is that the land loser, viz., the land owner, who is the 1st respondent herein, had breathed her last, without seeing the sheaf of green currency, which she would have received as compensation, as by one means or the other, the 1st respondent was made to wander from pillar to post, ultimately knocking at



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the doors of the court below to have a fair compensation fixed. Inspite of the fact that the court below had fixed the compensation, way back in the year 2010, by passing the impugned order, yet, no amount was paid to the land owner and after her demise, the legal heirs of the 1st respondent have also not received a penny till date, inspite of the fact that acquisition has gone through, the lands stood vested with the Government upon notification and inspite of determination of compensation, no amount has been paid.

29. In effect, what transpires from the above sequence of events is that while one party to the *lis*, viz., the requisitioning authority, has received his share, viz., the lands that were acquired from the land owner, however, the land owner has not received anything till date and even the enhanced compensation awarded by the court below was appealed against, in the present appeals, way back in the year 2011 and more than 12 years have passed since the impugned order has come to be passed, no compensation has been paid to the land loser.

30. Though holding of land is not a fundamental right, yet it is a statutory right, guaranteed by the Constitution, and if the State wants to take



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over the land, necessarily, the land owner has to be compensated at the earliest. However, this Court is not oblivious of the fact that more often than not, the land losers receive the fair compensation from the State and they have to knock the doors of the Court, by virtue of the provisions contained in the respective Act for receiving just compensation, which has happened in this case as well. The duty cast on the acquisition authority to consider all the materials before fixing compensation has been made an empty formality with a meagre compensation being fixed and essentially in all matters, the hands of the Court extends to render justice to the land loser in the form of awarding a fair compensation.

31. The above act of the appellants in not properly assessing and compensating the land loser, by the appropriate authority, thereby, resulting in making the land loser to toil hard to receive the compensation, inspite of the lands being taken over by the authorities, by use of its iron hands, needs to be visited with costs, as in the present case, the acquisition of the year 2001 and compensation awarded in the year 2004 has seen the light of the day only in the year 2023, though appeal has been filed in the year 2011. Therefore, this Court is inclined to award costs on the appellants for not



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paying the compensation to the land loser even after a lapse of more than two decades.

32. In the light of the aforesaid discussion, the Civil Miscellaneous Appeals are dismissed with costs of Rs.50,000/- (Rupees Fifty Thousand only) payable by the appellants in CMA No.3168/2011 to respondents 4 and 5, who are the legal heirs of the deceased 1st respondent/land owner. The Land Acquisition Officer is directed to implement the award dated 16.06.2010 passed in Arb.OP.No.139 of 2007 by depositing the compensation amount to the credit of Arb. O.P. No.139/2007 on the file of the Principal District Court, Chengalpattu along with the costs of Rs.50,000/- awarded by this Court, within a period of four weeks from the date of receipt of a copy of this judgment. Upon deposit of the amount of compensation together with the costs, the respondents 4 and 5, who are the legal heirs of the deceased 1st respondent/land owner, are entitled to withdraw the award amount in equal share by filing necessary application before the said Court and on the filing of the said application for withdrawal, the court below is directed to pass appropriate orders in accordance with law within a period of one week from



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the date of filing of the said application for withdrawal. Consequently, connected miscellaneous petitions are closed.

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Rli/GLN

Index: Yes/No

NCS : Yes/No

To

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No.1/54-28, Butt Road,
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Note: Issue order copy on 04.03.2024



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